



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 21, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0294

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	8.200 - Using Force, 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	8.200 - Using Force, 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	8.200 - Using Force, 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	8.200 - Using Force, 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged Named Employee #1-#4 (NE#1, NE#2, NE#3, and NE#4) used unauthorized force when they "beat him up," put a knee against his neck, and Tasered him multiple times.



ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG's) review and approval, believed that it could issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

On August 1, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant alleged the named employees used unauthorized force to take him into custody. An SPD supervisor submitted the Complainant's allegations to OPA for review as an Unsubstantiated Misconduct Screening (UMS).¹ OPA requested the allegations be submitted formally for further review.

OPA opened an intake investigation, reviewing the OPA complaint, UMS screening form, computer-aided dispatch (CAD) call report, incident report and supplemental statements, use of force documentation, Taser event data and pulse graphs, Seattle Fire Department (SFD) patient medical record, and body-worn video (BWV). OPA attempted to contact the Complainant by multiple phone numbers and a letter but was unsuccessful. Therefore, the Complainant was not interviewed.

SPD officers responded to a residential burglary and automobile theft call. Officers received the stolen vehicle's description and license plate information. They tracked the stolen vehicle with Apple AirTags attached to the victim's car keys.² About twelve minutes after the initial 9-1-1 call, a road rage call was dispatched. It involved a vehicle that matched the description of the stolen vehicle. About twenty-one minutes later, a shots-fired call was dispatched, also involving a vehicle that matched the stolen vehicle.

SPD officers requested the King County Sheriff's Office helicopter's support (Guardian 1), but it was unavailable. Washington State Patrol provided air support with their fixed-wing aircraft (Smokey 3). Smokey 3 located and tracked the stolen vehicle and later tracked the suspect. Smokey 3 provided updates on the suspect's location before SPD officers observed the suspect—the Complainant—a short distance from the stolen vehicle. The Complainant fled on foot. SPD officers pursued.

SPD officers located the Complainant in a residential backyard. A chain link fence overgrown with foliage separated the officers from the Complainant. NE#1, NE#4, and Witness Officer #1 (WO#1) pointed firearms at the Complainant and ordered him to show his hands. NE#1 also drew his Taser, warned the Complainant he would be tased, and

¹ See OPA Internal Operations and Training Manual, Section 8.1 – Unsubstantiated Misconduct Screening. The UMS program allows SPD supervisors to submit allegations of misconduct to OPA to review to determine whether they are, "clearly refuted by evidence." The OPA Director or their designee reviews the submissions and determines whether a formal submission of potential misconduct is required.

² Apple AirTags are small circular GPS trackers synched with an Apple account. Once registered, the owners can track the AirTags with the Find My app.



conducted an “arc” warning.³ The Complainant fled but was located shortly thereafter, sitting on a planter box in an enclosed patio area.

Witness Officer #2 (WO#2) had a 40-millimeter less-lethal launcher. WO#2 ordered the Complainant onto the ground as other officers approached the Complainant. WO#2 also warned the Complainant he would deploy his 40-millimeter launcher, but the Complainant did not comply with WO#2’s orders to get on the ground. Instead, the Complainant lit a pipe and began smoking. WO#2 deployed his 40-millimeter launcher, striking the Complainant’s upper right thigh. The Complainant still did not get on the ground.

SPD officers, including NE#1 and NE#2, contacted the Complainant. NE#2 pointed his firearm at the Complainant and gave him commands to get on the ground. NE#1 approached the Complainant and pulled him from a seated position. NE#2 attempted to control the Complainant’s right arm, but the Complainant pulled it away and reached toward his waistband. NE#2 knelt the Complainant’s midsection. Officers took the Complainant to the ground and tried pulling the Complainant’s hands from underneath him.

As officers struggled with the Complainant, NE#3 entered the patio area. NE#3 observed the Complainant had his hands underneath his body. NE#3 yelled, “Taser, Taser, Taser,” then deployed his Taser, striking the Complainant with its probes. The Complainant yelled “Ahh,” but kept resisting. NE#3 warned the Complainant to comply or be Tased again. NE#3 asked whether the Complainant understood. The Complainant continued to resist attempts to pull his hands from under his body. NE#3 pulled the Complainant’s shirt up and deployed his Taser in “drive stun” mode at the Complainant’s upper back.⁴ The Complainant again exclaimed, “Ahh.” NE#3 warned the Complainant that he would be Tased again if he failed to comply.

Officers continued to struggle with the Complainant before NE#2 controlled the Complainant’s left hand. Witness Officer #3 (WO#3) controlled the Complainant’s right hand. The Complainant stated several times that he could not breathe. After the Complainant was handcuffed, officers rolled the Complainant into the recovery position and frisked him for weapons. The Complainant thanked the officers several times after he was rolled into the recovery position. Officers recovered a folding knife from the Complainant’s back pocket. An officer requested SFD respond to evaluate the Complainant.

The Complainant stated he could not breathe, was Tased, and “beat up.” The Complainant alleged that the officer put a knee on his back and neck, causing injuries. The Complainant looked at Witness Officer #4 (WO#4) and alleged that WO#4 beat him up. However, BWV showed that WO#4 did not use reportable force against the Complainant. SFD evaluated the Complainant and cleared him at the scene.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#1 used excessive force on him.

³ An “arc” warning is an audible and visible electric current flowing at the end of the Taser. It is used to deter noncompliance.

⁴ A Taser can be deployed in two ways. First, it can shoot and attach “probes” to a subject and then deliver electric currents. Second, a Taser can be used in “drive stun” mode. Drive stun mode is when the Taser is pressed against a subject’s body to deliver an electric current.



SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must allow for the fact that officers are often forced to make “split-second decisions” under tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

The only reportable force NE#1 used on the Complainant was aiming a firearm. SPD policy considers aiming a firearm at a subject Type I Force, the lowest form of reportable force. *See* SPD Policy 8.400. OPA finds this use of force was reasonable, necessary, and proportional. Responding officers had reasonable suspicion to detain the Complainant for multiple violent felonies, one of which involved a firearm. The probability that the Complainant possessed a firearm, coupled with his flight and resistance, heightened the threat level. The Complainant posed a high risk of danger to officers and community members. Moreover, there was a strong governmental interest in preventing the Complainant’s escape. Considering these factors, aiming a firearm at the Complainant was reasonable. Given the strong indications that the Complainant could be armed with a firearm and may have recently shot at someone, no reasonable alternative existed for NE#1 other than to draw his firearm and prepare to use lethal force on the Complainant. For the same reasons, this response was proportional to the threat posed by the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 - Allegation #2

8.200 - Using Force, 2. Use of Force: When Prohibited

The Complainant alleged that the named employees used prohibited force by putting their knees on his neck.

Officers are prohibited from using “neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject’s neck.” SPD Policy 8.200(2).

OPA reviewed BWVs associated with this incident. Although multiple officers placed their knee on the Complainant’s back and shoulders as they struggled to apply handcuffs, OPA did not observe anyone place their knee on the Complainant’s neck. SFD also did not note injuries to the Complainant that would be consistent with that allegation.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**



Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#2 used excessive force on him.

NE#2 kned the Complainant's torso. As discussed at Named Employee #1 - Allegation #1, the officers had reasonable suspicion that the Complainant was armed and had just committed a series of violent felonies. NE#2 documented his belief that the Complainant was "armed and dangerous" and refused to obey orders to get on the ground. Further, NE#2 attempted to control the Complainant's right arm, but the Complainant pulled away and reached toward his waistband. Given the factors articulated above, together with the additional observation of the Complainant pulling his arm away from NE#2, reaching for his waistband, and NE#2's limited time to react, OPA finds it was objectively reasonable, necessary, and proportional for NE#2 to knee the Complainant's torso.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #2 – Allegation #2

8.200 – Using Force, 2. Use of Force: When Prohibited

For the reasons at Named Employee #1 - Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#3 used unauthorized force.

NE#3 deployed his Taser twice at the Complainant, once in "drive stun" mode. NE#3 documented that, when he did this, he believed the Complainant was armed and dangerous and that he would use "whatever means necessary, including the firearm he had used in an earlier shooting, in order to prevent being taken into custody." NE#3 documented the Complainant ignoring multiple commands to stop resisting and present his hands, and well as NE#3's fear that the Complainant could produce a concealed weapon from underneath his body. NE#3 documented his two uses of his Taser on the Complainant.

NE#3's Taser pulse graphs showed four Taser "events" during this encounter: one "trigger" deployment and three "arcs." Arcs one and two occurred within five-seconds of the initial "trigger" deployment, and both registered for a second. Arc three lasted five seconds and represented NE#3's "drive stun" deployment. OPA consulted with SPD's master Taser instructor to assist with interpreting the graph. OPA was advised that contacting the "ARC" button on the side of a Taser while it is deployed would produce additional "events" in the Taser's memory. OPA was also advised that nothing additional would occur if the "ARC" button were pressed during the period a Taser was already running a five-second cycle. Based on this information, OPA determined that arcs one and two had additional effects and did not constitute additional force applications.



When NE#3 deployed his Taser, the Complainant was still resisting arrest and had not yet been frisked for weapons. NE#3's concerns mirrored NE#1's and NE#2's, documented above. The Complainant continued to pose a high threat risk and was noncompliant. OPA finds NE#3's use of force to be objectively reasonable, necessary, and proportional for reasons like NE#1 and NE#2.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #3 – Allegation #2

8.200 – Using Force, 2. Use of Force: When Prohibited

For the reasons at Named Employee #1 - Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #4 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#4 used unauthorized force.

NE#4 also aimed a firearm at the Complainant. For the same reasons documented above at Named Employee #1 - Allegation #1, OPA finds this use of force objectively reasonable, necessary, and proportional.

NE#4 also documented the Complainant yelling “Ahh” as NE#4 removed the Complainant's arm from underneath him. Even if this application of force was the cause of the Complainant yelling “ahh,” it was a Type I use of force at most and was reasonable, necessary, and proportional in the totality of the circumstances.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #4 - Allegation #2

8.200 - Using Force, 2. Use of Force: When Prohibited

For the reasons at Named Employee #1 - Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**